



CITY of LAGUNA NIGUEL

30111 Crown Valley Parkway
Laguna Niguel, California, 92677
Phone: (949) 362-4300
Fax: (949) 362-4340

CITY COUNCIL

Mayor Elaine Gennawey
Mayor Pro Tem John Mark Jennings
Council Member Laurie Davies
Council Member Linda Lindholm
Council Member Fred Minagar

November 9, 2018

VIA ELECTRONIC FILING

Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Opposition to MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992.

Honorable Chairman Pai and Commissioners O'Rielly, Carr, and Rosenworcel:

The City of Laguna Niguel is strongly opposed to the Further Notice of Proposed Rulemaking (FNPRM), which proposes to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission.

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the state legislature to streamline deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this FNPRM provides no such exemption, threatening to undermine such priorities. As proposed, the FNPRMs broad definition of all "cable-related, in-kind contributions" other than PEG capital costs and build out requirements could be treated as "franchise fees," meaning:

- Cable operators currently paying the typical five percent franchise fee permitted by federal law will be able to reduce their current franchise fee payment by the fair market value of all in-kind contributions, with the exception of PEG capital costs required by the franchise associated with the construction of PEG access facilities and build out requirements.

- There will be significant reductions in cable franchise fees, depending on how the “fair market” value for PEG capacity and transmission is calculated within any given jurisdiction.
- PEG programming would be severely limited, if not altogether eliminated in some or most jurisdictions.

PEG programming offers a host of community benefits, including public access channels, educational access channels, and government access channels all aimed at providing locally beneficial information. Public access channels are available for use by the general public, usually created by a diverse variety of individuals, groups, and organizations within a community that is non-commercial in nature and generally free from editorial oversight. Educational channels are typically dedicated for learning institutions, such as local schools, colleges, and/or universities for school related activities, fully televised courses of instruction, and other educational purposes. Government access channels are often the easiest and best ways for local governments to be transparent, often televising city, county, school district, and other government meetings or live local election returns, town hall meetings, public debates, and other public policy topics.

The “fair market value” of such services may be impossible to discern and would likely be a source of litigation between cable operators and local governments. Most regrettably, however, is that this FNPRM threatens to limit or eliminate public, educational, and government access channels all meant to better help inform and empower the public. The potential loss of this public benefit alone should be concerning enough for the FCC to reject this FNPRM.

In fact, the City of Laguna Niguel’s PEG (Laguna Niguel TV) has been utilized to make public proceedings and events more accessible to City residents by providing live, gavel-to-gavel coverage of City Council meetings, other selected public meetings, and events of general community interest. We have utilized our PEG to share public information on City topics such as emergency preparedness, water quality, public safety, City projects, and other pertinent information. Laguna Niguel TV is also utilized to disseminate information on services the City provides its residents, activities and events, and to expand community awareness of local government and its decision-making processes. The limitations presented by this proposed regulation would make the goals of transparency, accountability, and public awareness more difficult to meet. Any regulation that would restrict our City’s capability to distribute information to residents should be rejected.

The City of Laguna Niguel is keen on maintaining local control, as we understand, more so, the wants and needs of our residents than other levels of government. This proposal would bypass California law which was designed to preserve many provisions commonly found in local ordinances, by keeping local revenues intact, allowing local public right-of-ways to remain controlled by the City, and ensuring that cable networks preserved a sufficient capacity for PEG access channels. Local control is affected negatively by the FNPRM’s intent to restrict and eliminate local discretion over the installation of small cell wireless facilities, prohibits our ability to regulate facilities and equipment used by cable operators, and prevents fair compensation for the use of public right-of-ways. This proposal oversteps the FCC’s regulatory abilities, violates states’ rights and further deteriorates local control.

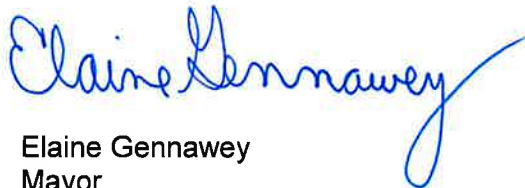
If preempted from regulating installations outside the franchise (since these franchises do not generally address the use of rights of way for non-cable facilities), local governments may lose their authority to manage a cable company’s deployment of non-cable facilities. This preemption would threaten to extend to fees for use of the rights of way, meaning:

- Cable companies can use local rights of way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights of way.
- Cable companies could potentially install “small wireless facilities” with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.
- Cable companies would gain a significant advantage against their competitors, including telecommunications providers even though the FCC has just adopted an order lowering their deployment standards, resulting in a race-to-the-bottom deployment strategy for both cable and telecommunications companies.

Fair and appropriate use of the public right-of-way is the fundamental policy principle for the imposition of a cable franchise fee and any other reasonable conditions required to preserve the character of each community. While the cable and telecommunications industry continues to attack the responsibility of local governments to protect the public health and safety of their own communities, our residents stand to lose the most in terms of the public benefits they receive and the input they can provide for facilities installed in their own backyards. The FCC should instead consider ways that cable operators can: improve their services, help close digital divides, and expand deployment to rural and lower income communities. Unfortunately, this FRNPRM continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

For these reasons, the City of Laguna Niguel **opposes** the FNPRM and respectfully urges the FCC to reject the deterioration of PEG services and fair use of the public right-of-way.

Sincerely,



Elaine Gennawey
Mayor
City of Laguna Niguel

cc: U.S. Senator Dianne Feinstein
U.S. Senator Kamala Harris
Representative Dana Rohrabacher
Tony Cardenas, Orange County Division, League of California Cities, tcardenas@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org